

<p><b>District Court, <u>Denver</u> City and County, Colorado</b>  <b>Court Address:</b>  <b>1437 Bannock Street, Denver, Colorado 80202</b></p> <p><b>Michelle Ferrigno Warren</b></p> <p><b>Petitioner,</b></p> <p><b>Vs.</b></p> <p><b>Jena Griswold, in her official capacity as</b>  <b>Colorado Secretary of State,</b></p> <p><b>Respondent.</b></p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p><b>Attorney for Petitioner:</b>  <b>Joy F. Athanasiou, Joy Strategies LLC.</b>  <b>325 S Newport Way, Denver, CO 80224</b></p> <p><b>Phone Number: 303-667-1816</b>  <b>E-mail: joy@amimmigration.com</b>  <b>Atty. Reg. #: 30154</b></p>	<p><b>Case Number:</b></p> <p><b>Division      Courtroom</b></p>
<p style="text-align: center;"><b>PETITION FOR DECLARATORY RELIEF</b></p>	

COMES NOW Petitioner, Michelle Ferrigno Warren, by and through undersigned counsel and submits the following Petition for Declaratory Relief as follows:

### **INTRODUCTION**

1. According to the Colorado Secretary of State, the potential candidate's petition to be placed on the ballot must be certified by March 17, 2020 for the June primary election.
2. The COVID-19 pandemic and resulting State of Emergency prevented Petitioner from gathering the requisite 10,500 signatures to petition on to the Colorado Democratic primary election ballot.

3. Petitioner requests the Court to enter an order to: (1) suspend the petition process because of the COVID-19 pandemic and extend the petitioning deadline for one week after the Governor Polis lifts Colorado's state of emergency; or, in the alternative, (2) order the Colorado Secretary of State to place Petitioner on the Democratic primary election ballot for United States Senate by deeming her to have substantially complied with the petition requirements based upon the number of signatures submitted by the statutory deadline of March 17, 2020.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this matter pursuant to C.R.S. § 1-1-113.

5. Under C.R.S. § 1-4-909, this petition is timely filed prior to the deadline for petition submission to the Secretary of State.

6. Venue is proper pursuant to C.R.C.P. 98(b)(2) given the Secretary's office is in the City and County of Denver.

### **PARTIES**

7. Petitioner, Michelle Ferrigno Warren, is an individual residing in Denver, Colorado.

8. Respondent Jean Griswold is the Colorado Secretary of State, with her office in Denver, Colorado.

### **RELEVANT FACTS**

9. Petitioner is a U.S. citizen and resident of the state of Colorado, who seeks to be on the 2020 Democratic Primary ballot for the upcoming June 2020 primary election.

10. To be placed on the Colorado Democratic Primary ballot Petitioner could elect to either pursue the Democratic nomination by assembly or pursue nomination through the Petition process. Petitioner elected to pursue the petition process, the provisions of which are set forth in Colorado Revised Statutes § 1-4-801 *et.seq.* Petitioner began gathering the necessary 1,500 signatures from each of Colorado's seven Congressional districts of registered electors from the State of Colorado. C.R.S. § 1-4-801(2)(c)(2).

11. Petitioner notified the Colorado Secretary of State of her decision to seek ballot access via the Petition on January 5, 2020, and began collecting petitions on January 21, 2020, using a combination of volunteers and paid petition circulators. Warren Aff., Ex. 1 at para. 2. She entered into an agreement with Ground Organizing for Latinos, a Colorado based petition and canvassing company to obtain 10,000 valid signatures on the campaign's behalf with volunteer support in Congressional districts 1, 2 and 6. *Id.* at para.

5. Under the terms of the agreement, the majority of petition signatures would be obtained between March 5th and March 15th, based upon canvassers' availability largely starting after the presidential primary on Tuesday March 3, 2020. Soto Aff., Ex. 2 at para. 5-7.

12. On March 5, 2020, Colorado had its first COVID-19 case. Following this, on Tuesday, March 10, 2020, seven days before the petition submission deadline, Colorado Governor Jared Polis declared a state of emergency affecting state and local public entities across the board. As of March 16th, 160 people in Colorado are infected with COVID-19 and one person has already died.

13. Beginning shortly before the announcement, petition circulators observed a sharp decline in the ability to obtain signatures. Ex. 2 at para. 8-11. The decline in signature gathering increased dramatically after the emergency declaration and continued unabated until Saturday, March 14, 2020. Both paid circulators and unpaid volunteers were equally hampered in their ability to obtain signatures. *Id.*, Ex. 1 at para. 9-11.

14. On March 12, 2020, the Colorado House of Representatives introduced legislation to extend the Secretary of State deadline for candidate petition submission by 14 days. Colorado HB20-1359. The bill, entitled “Ballot Access Modifications Public Health Concerns” extends various deadlines related to ballot access requirements in 2020 due to public health concerns including allowing political parties to amend their bylaws to allow remote participation in assemblies and conventions, to reduce or waive any quorum requirements to allow assemblies to proceed and to provide relief to the Secretary of State in the event of closure. *Id.*

15. After passing the House, the relevant petition extension provision was removed by the Senate and ultimately left out of the final bill which passed on March 14, 2020. Upon information and belief, the reason for excluding that relief was the threat to the public health and safety which would have been created by continued signature collection during the Colorado State of Emergency.

16. In the afternoon on March 14, 2020, Petitioner learned that the Legislature didn’t extend the deadline for petition collection or create any remedy for candidates requesting ballot access by petition. Petitioner took the dramatic step of suspending further signature

collection in order to preserve the health and safety of herself, staff, volunteer and paid circulators and of individuals in the community. Ex. 1 at para. 15.

## **CLAIM FOR RELIEF**

### **I. PETITIONER HAS STANDING TO BRING PETITION FOR DECLARATORY RELIEF**

17. Petitioner has standing to seek declaratory relief. *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979) (“[A]lthough an injury must usually be imminent, a plaintiff need not wait for the harm to occur before seeking redress”); *Susan B. Anthony List*, 573 U.S. at 158 (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 414 n.5 (2013) (“[a]n allegation of future injury may suffice if the threatened injury is ‘certainly impending,’ or there is a ‘substantial risk’ that the harm will occur.”)). Here, given the facts provided to the Court, the Court has able power to provide declaratory relief now because Petitioner’s injury due to COVID-19 has already occurred and will continue to occur once the Secretary determines that there may be insufficient number of signatures. Therefore, Petitioner does not need to wait for the Secretary of State to certify or not certify the requisite number of signatures five days after the March 17, 2020 deadline. Rather, the Supreme Court provides the Petitioner standing to seek declaratory relief now since there is an impending and substantial risk that Petitioner will be harmed by the COVID-19 pandemic and ensuing state action from the Governor's office.

### **II. COLORADO LAW PROVIDES NO ADEQUATE REMEDY PURSUANT TO C.R.S §§ 1-4-909 AND 1-1-113**

**A. Petitioner has substantially complied with C.R.S. § 1-4-909**

18. Petitioner asks the Court for an order that Petitioner's petition is sufficient and she is in substantial compliance with signature requirements under C.R.S. § 1-4-909(1).

19. Petitioner seeks to be a Candidate for US Senate in the 2020 general election.

20. To be placed on the ballot for US Senate, Petitioner was required to collect a total of 10,500 signatures, totaling 1,500 valid signatures of registered electors from each Colorado Congressional District. C.R.S. §§ 1-4-801. The signatures must be submitted to the Colorado Secretary of State by the third Tuesday in March, which is today, March 17, 2020. *Id.* Petitioner has submitted close to 9,000 signatures to the Secretary of State.

21. The Colorado General Assembly set forth requirements for initiative petitions and referendums which also provide guidance in the context of candidate petitions in Colorado Revised Statutes §§ 1-4-901 to 909.

22. On March 10, 2020, Governor Polis declared a State of Emergency and signature gathering became substantially impaired and further signature gathering contravened the public interest of protecting the health and safety of the community. In the interest of herself, her staff, volunteers, paid circulators and the broader community, Petitioner suspended signature collection.

23. When Governor Polis declared a state emergency, due to COVID-19, both fear of contamination and the Governor's action directing all citizens, including registered Democrats, to not attend gatherings of more than 250 people and to social distance from each other to curb the spread of COVID-19.

24. The current Colorado election code was enacted in 1963, repealed and reenacted with substantial changes in 1980 and a few additional modifications made in 1993.

25. At those times, legislators did not envision the need for an exception to the petition submission deadline. They could not have envisioned the global pandemic we face today. Under Colorado law, there is no exception to the statutory deadline and no legal remedy exists to address extraordinary circumstance beyond the candidate's control that prevent the collection of the required number of signatures by the statutory deadline.

26. This past week, the Colorado legislature had the opportunity to create a remedy for petition candidates but declined to do so, believed in part to be due to the same public health concerns which contributed to Petitioner's inability to gather signatures and decision to suspend further signature collection.

27. Absent an explicit statutory remedy, the current number of signatures should be deemed to have met the substantial-compliance standard. The valid signatures of eligible electors must be counted, in accordance with Colorado law, resulting in Petitioner's name being added to the general election ballot for having collected the required number of petition signatures.

28. It is distilled that the Colorado Election Code shall be "liberally construed" to permit eligible electors to vote and that all provisions are subject to "substantial compliance" as the standard for proper conduct. C.R.S. §§ 1-1-103; 1-1-113; *Loonan v. Woodley*, 882 P.2d 1380, 1384 (Colo. 1994) (discussing substantial compliance standard). *Loonan* held that "substantial compliance" is the appropriate level of statutory compliance to "facilitate and secure, rather than subvert or impede, the right to vote." *Id.*, citing *Meyer v. Lamm*, 846 P.2d 862 (Colo.1993). *Loonan* extended the substantial compliance standard to the initiative and referendum context. *Loonan supra at 1384*. The

*Loonan* Court additionally recognized that “constitutional and statutory provisions governing the initiative process should be ‘liberally construed’ so that ‘the constitutional right reserved to the people ‘may be facilitated and not hampered by either technical statutory provisions or technical construction thereof, further than is necessary to fairly guard against fraud and mistake in the exercise by the people of this constitutional right.’” *Id.* citing *Montero v. Meyer*, 795 P.2d 242, 245 (Colo. 1990).

29. The Colorado Constitution and election statutes favor liberal ballot access and serve the purpose of protecting the rights of voters and individuals who choose to run for public office. In *Clark v. City of Aurora*, the plaintiff challenged the City of Aurora’s petition signature rules based upon the plaintiff’s assertion that the rules were unconstitutional and unduly restrictive. *Clark v. City of Aurora*, 782 P.2d 771 (Colo. 1989). *Clark* analyzed the difference between technical compliance and substantial compliance. In *Clark*, the Court held that “there may be circumstances in which a wooden application of section 14-13(a)(5) might unduly impair an individual's right of referendum . . . [d]ue deference to the constitutional right of referendum.” *Id.*; see also *Meyer v. Lamm*, 846 P.2d 862 (Colo.1993) (right to vote).

30. As discussed above, Colorado election statute § 1-4-908 requires the Secretary of State to “review all petition information and verify the information against the registration records,” and “after review, the official shall notify the candidate of the number of valid signatures.” The statute codifies the requirements of the Colorado Constitution article V, § 1(6) which states, “such petition shall be signed by registered electors in their own proper persons only, to which shall be attached the residence address



of such person and the date of signing the same.” C.R.S. § 1-4-908. A properly verified petition meeting the constitutional requirements "shall be *prima facie* evidence that the signatures thereon are genuine and true and that the persons signing the same are registered electors." Colo. Const. art V, § 1(6); *see also* C.R.S. § 1-40-116(1).

31. In light of the Colorado Constitution and all of the cases discussed herein, denying Petitioner ballot access would contravene settled Colorado law since she was prevented from meeting the statutory petition submission requirement due to the extraordinary circumstance of the COVID-19 virus, the resulting state of emergency and public policy dictated that Petitioner suspend signature gathering due to the unprecedented health and safety concerns.

32. Equity dictates that this Court order the remedy of placing Ms. Ferrigno Warren’s name on the ballot since the statute does not provide any remedy and the legislative branch failed and/or refused to provide relief to petitioning candidates while providing relief under the same circumstance to assembly candidates, political parties and the Secretary of State.

**B. The provision of relief for caucus candidates and not for petitioner candidates in the wake of the COVID-19 state emergency violated the equal protection clause.**

33. Where a candidate’s ability to pursue ballot access has been substantially hindered and other candidates have been relieved from similar pressures, the government’s conduct is evaluated under strict scrutiny. *See Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983); *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979);

*MacGuire v. Houston*, 717 P.2d 948, 952 (Colo. 1986); *Chesser v. Buchanan*, 193 Colo. 471, 474 (1977).

34. Laws that impact fundamental rights are treated under strict scrutiny. *Chesser*, 193 Colo. at 474. Strict scrutiny analysis applies regardless of whether the law confers a restriction or an entitlement. *See Zobel v. Williams*, 457 U.S. 55, 60 (1982) (holding that Alaskan oil revenue dividends for citizens are still subject to equal protection analysis).

35. Colorado law holds that both the right to vote and the right of initiative and referendum are fundamental rights under the Colorado Constitution. *Loonan v. Woodley*, 882 P. 2d 1380 (1994). Moreover, the United States Supreme Court has held that restrictions to ballot access impacts two distinct fundamental rights: the right to freedom of assembly and the right to vote by implication. *Illinois State Bd.v. Socialist Workers*, 440 U.S.173, at 184.

36. Even though laws that impact elections are not always subject to strict scrutiny review, the Colorado Supreme Court has found that the right to associate politically is held under strict scrutiny when the “character and magnitude of the injury” is found to be a “significant and substantial [restraint] on the freedom of association . . .” *MacGuire*, 717 P.2d at 952; 460 U.S. at 788, and even in cases in which strict scrutiny does not apply, the State may not pass election laws that are arbitrary in effect and serve no legitimate state purpose. *O’Brien v. Skinner*, 414 U.S. 524, 530-31 (1974). In *O’Brien*, the Court found that a New York law which provided absentee ballots to people who were sick or otherwise physically unable to vote but did not provide the same ballots to people awaiting trial who were otherwise eligible to vote, violated equal protection. *Id.* The same

principle applies in the instant case. On March 14, 2020, the Legislature provided relief to candidates seeking ballot access through the assembly process but not to similarly situated candidates pursuing the ballot through the petition process.

37. While Colorado has found that certain state interests can be served in restricting ballot access like requiring candidates to demonstrate support, avoiding voter confusion, and preventing frivolous candidates from crowding the ballot. *Nat'l Prohibition Party v. State*, 752 P.2d 80, 85 (Colo. 1988), that is substantially different from the instant case in which the unforeseen circumstance of a global pandemic would directly interfere with a legitimate candidate's ability to access the ballot. Additionally, the Colorado General Assembly denied petitioning candidates any relief from the pressures of the COVID-19 pandemic state of emergency, but they provided relief for candidates seeking ballot access through the caucusing and assembly process. The COVID-19 pandemic has substantially impaired Petitioner's ability to obtain the signatures required to gain ballot access. Warren Aff. ¶¶ 9-11.

38. In addition to witnessing a steep decline in attendance to events, many volunteers and campaign staff began to express concerns over continuing their work in light of the virus. Warren Aff. ¶¶ 10, 11. The original draft of HB 1359 would have included a fourteen-day extension for petitioner candidates that would have lifted this substantial burden. Warren Aff. ¶ 13. However, because the state failed to lift a substantial burden on Ms. Warren's candidacy while lifting similar burdens on other campaigns, the General Assembly's actions are subject to strict scrutiny review. *MacGuire*, 717 P.2d at 952.

39. The disparate treatment between petitioning candidates and assembly candidates was wholly arbitrary, serving only administrative aims that are not considered a legitimate state interest with respect to voting and assembly rights. *O'Brien*, 414 U.S. at 530-31. Therefore, the General Assembly's actions violate the equal protection rights of the Petitioner; therefore, declaratory relief is warranted here.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays for declaratory relief as follows:

1. For an order requiring the Secretary of State to place Petition on the ballot by deeming the current number of collected petitions by Petitioner to be sufficient for ballot access.
2. For an order requiring the Secretary of State to extend the petition submission date by seven days beginning on the first day following the date that the Colorado State of Emergency has been lifted.
3. For such other and further relief as this Court deems just and proper.

Dated this 17th day of March, 2020.

Original document on file at Joy Strategies LLC  
/s/ Joy Athanasiou

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Joy Athanasiou, #30154  
Attorney for Petitioner

### **CERTIFICATE OF SERVICE**

I certify that on a true and accurate copy of the foregoing was served to the other parties via electronic service on March 17, 2020 to:

Office of the Attorney General  
1300 Broadway, 10th Floor  
Denver CO 80202

/s/ Joy Athanasiou

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Joy Athanasiou